

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 WILLIE WEAVER,

No. CIV S-05-0449-RRB-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 NOVENCIDO, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
18 to 42 U.S.C. § 1983. Pending before the court is a motion to dismiss filed by defendant Gomez
19 (Doc. 19), on January 9, 2006. The request by defendants Novencido and Merkle to join in
20 Defendant Gomez' motion (Doc. 27) is granted. Defendant Gile has not been served with the
21 complaint. Plaintiff filed an opposition to defendant's motion on February 17, 2006 (Doc. 28).

22 In his motion to dismiss, defendant Gomez argues that this action is barred by the
23 applicable statute of limitations. As defendant correctly observes, the statute of limitations
24 applicable to a § 1983 action is the state's general statute of limitations. See Bd. of Regents v.
25 Tomanio, 446 U.S. 478, 484-85 (1980). State law also governs tolling the limitations period.
26 See id. Federal law, however, governs when the statute of limitations begins to run. See Ward

1 v. Westinghouse Canada, Inc., 32 F.3d 1405, 1407 (9th Cir. 1994); see also Bagley v. CMC Real
2 Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991). An action accrues when the plaintiff knows, or
3 has reason to know, of the injury which is the basis of the action. See id. Once the action
4 accrues, the statute of limitations begins to run. See Braxton-Secret v. A.H. Robins Co., 769
5 F.2d 528, 530 (9th Cir. 1985). In this case, plaintiff clearly states in his complaint that the events
6 which form the basis of the alleged constitutional violations occurred in October 1996.
7 Therefore, this action accrued in 1996, which is when the statute of limitations began to run.
8 Until 2002, the general statute of limitations in California was one year. See former Cal. Code
9 Civ. Proc. § 340(3); see also Fink v. Shedler, 192 F.3d 991, 914 (9th Cir. 1999). The limitations
10 period, therefore, expired in this case sometime in October 1997.

11 The court next addresses whether the limitations period should be tolled. Until
12 1995, the limitations period in California was tolled for any period of continuous incarceration, if
13 the plaintiff was not serving a life term. See former Cal. Code. Civ. Proc. § 352(a)(3). In 1995,
14 that rule was changed to provide for only two years of tolling. See Cal. Code. Civ. Proc. §
15 352.1. In California, plaintiffs who are prisoners serving life terms were not entitled to any
16 tolling, and still are not. Because the claims in this case accrued in 1996, at best plaintiff would
17 be entitled to two years of tolling. Therefore, the limitations period actually expired in this
18 action sometime in October 1999.

19 In his opposition to defendant's motion to dismiss, plaintiff argues that he filed
20 suit in this court in 1997 under case number CIV S-97-0336-DFL-JFM-P. Plaintiff states that
21 case ended April 17, 2002, but was re-opened March 7, 2005. A review of the relevant dockets
22 reflects that the case filed in 1997 was closed by way of summary judgment in favor of
23 defendants in 2000, not 2002 as plaintiff states. Plaintiff never appealed. Contrary to plaintiff's
24 current assertion, that action was never re-opened, either by order of this court or the appellate
25 court. In fact, March 7, 2005, is the date plaintiff filed the instant action. This does not
26 constitute a re-opening of the 1997 action. Moreover, the 1997 action can't have any logical

1 bearing on the expiration of the statute of limitations for this action because they involved
2 different sets of defendants and factual allegations.


3 Because it is clear from the face of the complaint that all of the claims raised in
4 this action are barred by the statute of limitations, dismissal of the action in its entirety, as
5 against all defendants, is appropriate. See Vaughan v. Grijalva, 927 F.2d 476, 479 (9th Cir.
6 1991).

7 Based on the foregoing, the undersigned recommends that:

- 8 1. Defendant's motion to dismiss be granted;
- 9 2. This action be dismissed, in its entirety, as against all defendants; and
- 10 3. The Clerk of the Court be directed to enter judgment and close this file.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court. The document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendations." Failure to file objections within the specified time may waive
16 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17
18 DATED: April 20, 2006.

19
20 
21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26